

OCT 24 1939

No 19

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

OKLAHOMA PACKING COMPANY, FORMERLY WILSON
& CO., INC., OF OKLAHOMA, AN OKLAHOMA CORPORATION,
AND WILSON & CO., INC., OF OKLAHOMA, A
DELAWARE CORPORATION,

Petitioners,

vs.

OKLAHOMA GAS AND ELECTRIC COMPANY, A CORPORATION;
OKLAHOMA NATURAL GAS COMPANY, A CORPORATION;
W. T. PHILLIPS, JR., H. J. CRAWFORD, J. V. RITTS,
LEONARD C. RITTS, R. W. HANNAN, A. W. LEONARD,
AND R. C. SHARP, THE DIRECTORS OF OKLAHOMA
NATURAL GAS COMPANY, A DIS-SOLVED CORPORATION;
AND OKLAHOMA NATURAL GAS CORPORATION,

Respondents.

PETITION OF PETITIONERS FOR REHEARING.

W. R. BROWN,
PAUL WARE,

Counsel for Petitioners.

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OKLAHOMA GAS AND ELECTRIC COMPANY, A
CORPORATION; OKLAHOMA NATURAL GAS COM-
PANY, A CORPORATION; W. T. PHILLIPS, JR., H. J.
CRAWFORD, J. V. RITTS, LEONARD C. RITTS,
R. W. HANNAN, A. W. LEONARD, AND R. C. SHARP,
THE DIRECTORS OF OKLAHOMA NATURAL GAS COMPANY, A
DISSOLVED CORPORATION; AND OKLAHOMA NATURAL
GAS CORPORATION,

Respondents.

PETITION OF PETITIONERS FOR REHEARING.

Come now petitioners in the above-entitled cause and
present this, their petition for rehearing, and in support
thereof respectfully show:

The modification of the original opinion of this Court,
which fails to apply the rule of *res judicata*, retroactively
converts a 1930 judicial review by the Supreme Court of
Oklahoma (146 Okla. 272) into a legislative review by the

adoption of respondents' erroneous interpretation and application of the decision in *Community Natural Gas Co. v. Corporation Commission*, 182 Okla. 137. In that case, the Oklahoma Supreme Court, in 1938, correctly refused to apply the principle of *res judicata*, and thereby convert its 1930 legislative review and order into a judicial adjudication, for the same reasons announced by this Court in *Prentiss v. Atlantic Coast Line*, 211 U. S. 210.

In the first *Community Gas* case,¹ the order of the Corporation Commission, which was reviewed by the Oklahoma Supreme Court in 1934, was a temporary rate order. This first review was repeatedly characterized by that Court in the second appeal, 182 Okla. 137, at page 140, as follows:

"The action which we took was legislative in character, for we not only examined the record, but we corrected what the Commission had done and substituted our own order therefor."

(See similar statements at pages 139, 141.)

The character and nature of that Court's original review (170 Okla. 292) was not sufficient to generate *res judicata*. On the second appeal (1938), the Court correctly refused to retroactively change the nature of the original review merely because the *Ginners* case² had been decided in the interim.

That is neither the situation nor the contention of petitioners in the case at bar. The order involved in this case is not a rate order. The Oklahoma Supreme Court in 1930, *Oklahoma Gas and Elec. Co. v. Wilson & Co.*, 146 Okla. 272, affirmed an order of the Commission directing respondent to discontinue its discrimination; i. e., to serve gas to the Wilson plant at the Gas Company's voluntarily and previously established rate, which is charged other consumers similarly situated. The 1930 decision was in

1. *Lone Star Gas Co., et al. v. Corporation Commission, et al.*, (1934) 170 Okla. 292.

2. *Oklahoma Cotton Ginners' Assn. v. State*, 174 Okla. 243.

and of itself sufficient to generate *res judicata* without any reference to the subsequent decision of that Court in the *Ginners'* case, or in the second *Wilson* case (*Oklahoma Gas and Elec. Co. v. Wilson & Co.*, 178 Okla. 604). The *Ginners'* case merely clarifies the soundness of the Oklahoma Court's action in 1930 that when appropriate questions for judicial determination are presented to it for review, its decision thereon is judicial in character. Neither is reference necessary to the second *Wilson* case (178 Okla. 604) other than to point out that when respondents contended that the 1930 judgment was legislative, that Court replied that it was judicial.

The Supreme Court of Oklahoma in the *Community Gas* case did not announce any peculiar local exceptions to the general rule of *res judicata* but only held that that principle had no application where the previous review of that Court was legislative in character.

We respectfully submit that the judicial review by the Oklahoma Supreme Court (146 Okla. 272) should be given that "finality by this Court which is the essence of *res judicata*."

Respectfully submitted,

W. R. BROWN,
PAUL WARE.

CERTIFICATE OF COUNSEL.

I, Paul Ware, Counsel for the above-named petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

PAUL WARE,
Counsel for Petitioner.